

01
02
03
04
05
06
07 UNITED STATES DISTRICT COURT
08 WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

09 ANTHONY EUGENE LEWIS,) CASE NO. C08-1201-JCC
10 Plaintiff,)
11 v.)
12 KING COUNTY,) REPORT AND RECOMMENDATION
13 Defendant.)
14

15 INTRODUCTION AND SUMMARY CONCLUSION

16 Plaintiff Anthony Eugene Lewis proceeds *pro se* and *in forma pauperis* in this 42
17 U.S.C. § 1983 action. Both plaintiff and defendant have submitted motions for summary
18 judgment. (Dkts. 50 & 56.)

19 Summary judgment is appropriate when “the pleadings, depositions, answers to
20 interrogatories, and admissions on file, together with the affidavits, if any, show that there is no
21 genuine issue as to any material fact and that the moving party is entitled to a judgment as a
22 matter of law.” Fed. R. Civ. P. 56(c); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986).

01 The moving party is entitled to judgment as a matter of law when the nonmoving party fails to
02 make a sufficient showing on an essential element of his case with respect to which he has the
03 burden of proof. *Celotex*, 477 U.S. at 322-23. “[A] party opposing a properly supported
04 motion for summary judgment may not rest upon mere allegation or denials of his pleading, but
05 must set forth specific facts showing that there is a genuine issue for trial.” *Anderson v.*
06 *Liberty Lobby, Inc.*, 477 U.S. 242, 256 (1986) (citing Fed. R. Civ. P. 56(e)).

07 Plaintiff here avers claims against defendant King County pursuant to 42 U.S.C. § 1983.
08 In order to sustain a § 1983 claim, plaintiff must show (1) that he suffered a violation of rights
09 protected by the Constitution or created by federal statute, and (2) that the violation was
10 proximately caused by a person acting under color of state or federal law. *West v. Atkins*, 487
11 U.S. 42, 48 (1988); *Crumpton v. Gates*, 947 F.2d 1418, 1420 (9th Cir. 1991).

12 A local government unit or municipality can be sued as a “person” under § 1983.
13 *Monell v. Department of Social Servs.*, 436 U.S. 658, 691-94 (1978). However, a municipality
14 cannot be held liable under § 1983 solely because it employs a tortfeasor. *Id.* at 691. A
15 plaintiff seeking to impose liability on a municipality under § 1983 must identify municipal
16 “policy” or “custom” that caused his or her injury. *Board of the County Commissioners v.*
17 *Brown*, 520 U.S. 397, 403 (1997). As reflected below, plaintiff fails to identify or provide any
18 support for the existence of any such municipal policy or custom in this case.

19 In March 2005, Seattle Police Officers arrested plaintiff for possession of rock cocaine,
20 a violation of the Uniform Controlled Substances Act. (Dkt. 52, Ex. 1.) In a December 2005
21 bench trial in King County Superior Court, plaintiff was found guilty of the offense. (*Id.*, Ex.
22 2.) Seattle Police Officer James Lee had testified during the trial that he had not used any force

01 during the course of the arrest. (Dkt. 51, Ex. 1.) On the day following the trial, Lee informed
02 King County Deputy Prosecuting Attorney Gabrielle (Dickerman) Charlton that he had, in fact,
03 struck plaintiff during the arrest. (*Id.*) Charlton promptly notified the court and defense
04 counsel of this fact, after which the court granted plaintiff a new trial. (*Id.*; Dkt. 52, Ex. 4.)
05 On October 3, 2006, the court dismissed the case against plaintiff upon concluding that the
06 cocaine in plaintiff's possession at the time of his arrest was inadmissible as evidence. (Dkt.
07 52, Ex. 5.)

08 Plaintiff avers that defendant King County violated his constitutional rights through
09 malicious prosecution, denial of compulsory process, failure to provide him with exculpatory
10 evidence, false imprisonment, failure to provide him with money damages or an apology letter
11 in response to his claim for damages, and denial of medical attention. (Dkt. 7.)¹ However,
12 despite repeatedly utilizing the phrase "custom or policy" in his amended complaint, plaintiff
13 provides no support for the existence of an actual custom or policy of King County that resulted
14 in a violation of his constitutional rights.

15 It is not enough to simply attach the terms custom and/or policy to assertions of
16 constitutional violations. Instead, a plaintiff setting forth a claim against a municipality under
17

18 ¹ Plaintiff originally named Charlton and numerous other King County Prosecutors and entities
19 as defendants. (Dkt. 1-2.) Following the identification of deficiencies in the complaint, plaintiff
20 submitted his amended complaint naming only King County and King County Correctional Facility as
21 defendants. (Dkt. 7.) The Court dismissed the amended complaint as to King County Correctional
22 Facility and directed service on King County. (Dkt. 8.) Plaintiff subsequently sought to again amend
his complaint by naming Seattle Police Officers Michael Tietjen, James Lee, Kerry Zieger, Mark
Hazard, and John and Jane Does #1-5, and the King County Prosecuting Attorney's Office as
defendants. The Court rejected the addition of these additional defendants, noting with respect to the
police officers that plaintiff has an existing lawsuit, regarding the same incident at issue in this case, in
which he names Tietjen, Lee, Zieger, and Hazard as defendants. *See Lewis v. City of Seattle*, No.
C07-1517-MJP-BAT.

01 § 1983 must show that the defendant's employees or agents acted through an official custom,
02 pattern, or policy that permits deliberate indifference to, or violates, the plaintiff's civil rights;
03 or that the entity ratified the unlawful conduct. *See Brown*, 520 U.S. at 404; *Monell*, 436 U.S.
04 at 690-91; *Larez v. Los Angeles*, 946 F.2d 630, 646-47 (9th Cir. 1991). The municipal action
05 must be the moving force behind the injury of which plaintiff complains. *Brown*, 520 U.S. at
06 404. Here, even assuming for the sake of argument that plaintiff was somehow deprived of his
07 constitutional rights, he designates no evidence in the record that would suggest the County had
08 a pertinent policy or custom, that the County's policy or custom amounted to deliberate
09 indifference to plaintiff's rights, or that the policy or custom was the moving force behind the
10 deprivation.

11 Indeed, plaintiff's own motion for summary judgment does not address or even mention
12 a custom or policy of King County as the basis for his complaint.² Instead, in addition to a
13 lengthy account of his arrest by Seattle Police Officers and his criminal trial, plaintiff expends
14 considerable energy arguing his entitlement to summary judgment based on defendant's
15 purported failure to comply with discovery requests. He also accuses the Court of exhibiting
16 bias in relation to those requests. A failure to comply with discovery requests does not entitle
17 plaintiff to summary judgment. *See generally* Fed. R. Civ. P. 56(c); *Celotex Corp.*, 477 U.S. at
18 322. In any event, the Court rejected plaintiff's arguments regarding the discovery requests at

19
20 2 Defendant moved to strike plaintiff's motion as untimely. (Dkt. 63.) However, plaintiff
21 attests that he delivered the motion to prison authorities for mailing on the day serving as the deadline
22 for filing dispositive motions. (Dkt. 56-4 at 4.) Under the "prison mailbox rule," the motion is
deemed filed on the day plaintiff delivered the motion to prison authorities for mailing to the Clerk.
Houston v. Lack, 487 U.S. 266, 270 (1988). For this reason, defendant's motion to strike is DENIED.
The Court does note that plaintiff's motion, at forty-three pages, far exceeds the limit of twenty-four
pages for motions for summary judgment. *See* Local Rule 7(e)(3).

01 issue (Dkts. 44 & 67) and plaintiff provides no reason to revisit the Court's decision.
02 Moreover, there is no basis for concluding that any of the contested discovery requests would
03 reveal a relevant custom or policy on the part of King County. (*See id.*)

04 It is apparent from a review of both plaintiff's response to defendant's motion and
05 plaintiff's own motion for summary judgment that he seeks to challenge therein the acts and/or
06 omissions of individuals not parties to this lawsuit, including Charlton and the Seattle Police
07 Officers involved in his arrest. This lawsuit, naming only King County as a defendant and
08 lacking any support for the existence of a relevant County custom or policy, is not the proper
09 forum to pursue such claims.

10 Finally, even if plaintiff had identified a relevant King County custom or policy, his
11 claims would face dismissal. In a lawsuit filed against the Seattle Police Officers who arrested
12 plaintiff, this Court dismissed plaintiff's claim of malicious prosecution upon concluding there
13 was probable cause to arrest plaintiff and charge him with a criminal offense given that he
14 unquestionably possessed cocaine at the time of his arrest. *See Lewis v. City of Seattle*, No.
15 C07-1517-MJP-BAT (Dkt. 79 (Report and Recommendation citing *Freeman v. City of Santa*
16 *Ana*, 68 F.3d 1180, 1189 (9th Cir. 1995) (a plaintiff "must show that the defendants prosecuted
17 [him] with malice and without probable cause, and that they did so for the purpose of denying
18 [him] equal protection or another specific constitutional right.")) and Dkt. 101 (Order adopting
19 Report and Recommendation). The Court also dismissed, *inter alia*, plaintiff's claims as to a
20 denial of compulsory process and denial of medical attention, finding no evidence to support

01 such claims. (*Id.*)³ Plaintiff's assertion of a denial of exculpatory evidence appears to
02 similarly lacks support, while his false imprisonment claim would fail, like his assertion of
03 malicious prosecution, given the probable cause for his arrest, *see, e.g., Mustafa v. Chicago*,
04 442 F.3d 544, 547 (7th Cir. 2006) ("Probable cause to arrest is an absolute defense to any claim
05 under Section 1983 against police officers for wrongful arrest, false imprisonment, or malicious
06 prosecution.") Lastly, as asserted by defendant, there is no constitutional or federal statutory
07 right to receive payment, an apology, or any other type of relief simply based on the filing of a
08 claim for damages.

09 In sum, plaintiff's assertion as to the existence of a custom or policy on the part of King
10 County that resulted in a violation of his constitutional rights is no more than conclusory. Such
11 conclusory allegations are insufficient to defeat defendant's motion for summary judgment.
12 *Leer v. Murphy*, 844 F.2d 628, 633 (9th Cir. 1988) ("Sweeping conclusory allegations will not
13 suffice to prevent summary judgment.") Accordingly, plaintiff's motion for summary
14 judgment (Dkt. 56) should be DENIED, defendant's motion for summary judgment (Dkt. 50)
15 should be GRANTED, and this case should be DISMISSED. A proposed order accompanies
16 this Report and Recommendation.

17 DATED this 24th day of September, 2009.

18
19 

20 Mary Alice Theiler
United States Magistrate Judge

21 3 Several of plaintiff's claims against the Seattle Police Officers survived summary judgment,
22 including his allegations that he was unlawfully stopped and detained, that two officers used excessive
force, and that another officer failed to protect him. *See Lewis v. City of Seattle*, No.
C07-1517-MJP-BAT (Dkts. 79 & 101).